IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

JAMES E. MILES,	*	
	*	1-00-CV-90020
Plaintiff,	*	
	*	
v.	*	
	*	
KENNETH S. APFEL, Commissioner of Social Security,	*	
	*	
	*	ORDER
Defendant.	*	
	*	

Plaintiff, James E. Miles, filed a Complaint in this Court on April 4, 2000, seeking review of the Commissioner's decision to deny his claim for Social Security benefits under Title II and Title XVI of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* and 1381 *et seq.* This Court may review a final decision by the Commissioner. 42 U.S.C. § 405(g). For the reasons set out herein, the decision of the Commissioner is affirmed.

Plaintiff filed applications for benefits on June 24, 1996. Tr. at 136-37 and 444-49. After the applications were denied initially and upon reconsideration, Plaintiff requested a hearing before an Administrative Law Judge. A hearing was held before Administrative Law Judge Jan E. Dutton (ALJ) on December 15, 1995. Tr. at 54-88. Because the ALJ determined that the medical record was not complete, and that the missing records were necessary for her to formulate a hypothetical question, the hearing was, after Plaintiff's testimony, continued until a later date. Tr. at 87, The hearing was reconvened on January 23, 1998, at which time testimony was taken from a vocational expert. Tr. at 36-53. The ALJ issued a Notice of Decision – Unfavorable on

14-05-037

9.

February 27, 1998. Tr. at 16-33. The ALJ's Decision was affirmed by the Appeals Council of the Social Security Administration on January 28, 2000. A Complaint was filed in this Court on April 4, 2000.

Although no purpose will be served by reciting a detailed summary of the medical evidence here, a complete summary is attached as an appendix to this decision.

At the time of the hearing, Plaintiff was 40 years old. Plaintiff has a history of chronic low back pain, with surgery consisting of a diskectomy and laminectomy in the summer of 1997. Plaintiff also has a history of a cholecystectomy on June 19, 1995, and an arthroscopy and partial lateral meniscus resection on his left knee on September 25, 1995. Additionally, Plaintiff's treating family physician, Alan R. Fisher, M.D., prescribed medication for an anxiety disorder. At the administrative hearing, however, Plaintiff and his attorney told the ALJ that Plaintiff was not claiming a mental disorder as an alleged impairment. *See* Tr. at 60 and 82. On December 22, 1997, Charles Taylon, M.D., the Neurosurgeon who performed Plaintiff's back surgery, wrote to Plaintiff's attorney that Plaintiff's restrictions are 20 pounds of lifting with no bending or twisting.

At the administrative hearing of December 15, 1997, Plaintiff's attorney told the ALJ that he had learned the day of the hearing that Plaintiff had undergone the back surgery in July of 1997. Testimony was taken from Plaintiff and the hearing was adjourned to allow the medical records to be brought up to date before testimony was taken from a vocational expert. When the hearing reconvened on January 23, 1998, the ALJ called Lynne Easterday to testify as a vocational expert. The ALJ referred the vocational expert to Dr. Taylon's opinion: "... his restrictions are 20 pounds of lifting with no bending or twisting and I want you to consider that restric-

tion and indicate to me if it would be possible for Mr. Miles to return to any of his prior relevant work?" Tr. at 42. In response, the vocational expert testified that Plaintiff would be able to do his past work as a machine operator, previously classified as a blow molding machine operator. The vocational expert testified: "There are some machine operator jobs I've observed where they wouldn't have to bend or twist but those numbers would be very few." *Id.* Although the vocational expert did not believe most employers would accommodate a sit/stand option, she did point to 200 sedentary machine operator jobs as well as 2,000 light jobs that would require more sitting than standing. Tr. at 43-44. The job of "blow molding machine operator as described in the Dictionary of Occupational Titles, is found at page 238 of the record.

In her decision of February 27, 1998, the ALJ found that the restrictions imposed upon Plaintiff by his treating physician, along with the need to alternate sitting and standing constituted his residual functional capacity. Tr. at 32. The ALJ held that Plaintiff has the ability to do his past relevant work and, therefore, that he is not disabled or entitled to benefits. Tr. at 33. In the body of the decision the ALJ wrote:

> While the Claimant's testimony, insofar as it attempted to create the impression of total incapacity, has been found to lack credibility for the reasons set forth earlier in this decision, the undersigned Administrative Law Judge has given him every benefit of the doubt with regard to any conflicts or contradictions contained in the clinical and laboratory findings of record. The evidence, viewed in that light, shows that, because of his impairments the Claimant would be able to lift and carry up to 20 pounds and he would have to avoid bending and twisting and he would have to alternate sitting and standing throughout the course of the work day in order to achieve maximum comfort.

Tr. at 31. In her findings, the ALJ held that Plaintiff's testimony regarding his symptomatology appeared credible, and not inconsistent with the pertinent clinical and laboratory findings of

record and other criteria for evaluating pain and subjective complaints under *Polaski v. Heckler*, 739 F.2d 1320, 1321-22 (8th Cir. 1984). Tr. at 33.

DISCUSSION

> The scope of this Court's review is whether the decision of the Secretary in denying disability benefits is supported by substantial evidence on the record as a whole. 42 U.S.C. § 405(g). *See Lorenzen v. Chater*, 71 F.3d 316, 318 (8th Cir. 1995). Substantial evidence is less than a preponderance, but enough so that a reasonable mind might accept it as adequate to support the conclusion. *Pickney v. Chater*, 96 F.3d 294, 296 (8th Cir. 1996). We must consider both evidence that supports the Secretary's decision and that which detracts from it, but the denial of benefits shall not be overturned merely because substantial evidence exists in the record to support a contrary decision. *Johnson v. Chater*, 87 F.3d 1015, 1017 (8th Cir. 1996)(citations omitted). When evaluating contradictory evidence, if two inconsistent positions are possible and one represents the Secretary's findings, this Court must affirm. *Orrick v. Sullivan*, 966 F.2d 368, 371 (8th Cir. 1992)(citation omitted).

Fenton v. Apfel, 149 F.3d 907, 910-11 (8th Cir. 1998).

In short, a reviewing court should neither consider a claim de novo, nor abdicate its function to carefully analyze the entire record. *Wilcutts v. Apfel*, 143 F.3d 1134, 136-37 (8th Cir. 1998) citing *Brinker v. Weinberger*, 522 F.2d 13, 16 (8th Cir. 1975).

In his brief, Plaintiff first argues that the ALJ improperly discredited his subjective complaints of pain. As set forth above, however, it is the opinion of the Court that the ALJ did not discredit Plaintiff's testimony. Rather, the ALJ found that the claimant's testimony did not support a finding of total disability. There is no error in such a finding. As the Court stated in *Hutton v. Apfel*, 175, F.3d 651, 654 (8th Cir. 1999): "As is true in many disability cases, there is no doubt that the claimant is experiencing pain; the real issue is how severe that pain is." (Quoting *Spradling v. Chater*, 126 F.3d 1072, 1074 (8th Cir. 1997). In the opinion of the Court, the

ALJ did not disbelieve Plaintiff's testimony, rather that testimony, along with the opinion of the treating physician, did not support a finding that Plaintiff's pain is severe enough to preclude all work activity.

Next, Plaintiff argues that the ALJ erred in holding that there is a significant number of jobs that Plaintiff is able to do in his impaired condition. In this case, however, that ALJ held that Plaintiff is able to do his past work as a machine operator. In *Rater v. Chater*, 73 F.3d 796, 769 (8th Cir. 1996), the Court held that the Social Security Act does not require a particular job to exist in significant numbers in the national economy in order to constitute past relevant work.

The ALJ's finding that Plaintiff is able to do his past relevant work is supported by the evidence supplied by the treating surgeon who performed Plaintiff back surgery. It is also supported by Plaintiff's testimony, which the ALJ found to be credible, that Plaintiff needs to alternate his sitting and standing throughout the day to maintain maximum comfort. Finally, the ALJ's finding that Plaintiff is able to do his past relevant work is supported by the testimony of the vocational expert.

Because the ALJ found that Plaintiff is able to do his past relevant work, the burden of proof did not shift to the Commissioner to prove that other work exists in significant numbers in the national economy, as Plaintiff argues.

CONCLUSION AND DECISION

The Commissioner's decision is supported by substantial evidence on the record as a whole and not affected by errors of law which require reversal. The Court has considered the evidence which detracts from the Commissioner's decision as well as evidence which supports it. In the opinion of the Court, it is possible to draw only one conclusions from the evidence,

namely that Plaintiff is able to his past relevant job as a machine operator. The Commissioner's decision, therefore, is affirmed.

Plaintiff's Motion to reverse is denied. Defendant's motion to affirm the Commissioner is granted. The case is dismissed.

IT IS SO ORDERED.

Dated this 5th day of February, 2001.

Robert W. Pratt

ROBERT W. PRATT
U.S. DISTRICT JUDGE

APPENDIX

MEDICAL EVIDENCE
HOSPITAL EMERGENCY ROOM RECORDS

Plaintiff was seen at the Emergency Room of St. Joseph Hospital on March 12, 1992, after he injured his back lifting trash. Tr. at 252. Plaintiff told the doctor that he had a herniated disc at L4-5. The doctor wrote that Plaintiff has a history of chronic back pain with herniated discs at L4-L5. It was also noted that on the previous Sunday while working with tires on a cab at work Plaintiff felt his back slip at which time he had more pain than he normally has. Tr. at 253. Because he was having bilateral leg pain, Plaintiff underwent an MRI on March 16, 1992. Tr. at 250-51. The MRI showed degenerative changes involving the L4-L5 and L5-S1 joints. There was narrowing of the joint space at L5-S1 with some vacuuming of the discs. No fractures were identified. Tr. at 251.

Plaintiff was seen at the Emergency Room on November 25, 1993, complaining of a two day history of abdominal pain with vomiting any time that he ate. Tr. at 241. The examining doctor noted that one year previous, Plaintiff has suffered a bowel laceration secondary to trauma. Tr. at 242.

On December 29, 1993, Plaintiff went to the Mercy Hospital Emergency Room for a physical to establish his eligibility to drive a taxi cab. After an examination, A.R. Fisher, M.D. completed a form in which he stated that Plaintiff was able to work as a taxi cab driver without restrictions. Tr. at 283. Plaintiff was treated at the Mercy Hospital Emergency Room on June 21, 1994, after he lacerated the palm of his right hand on a broken piece of pottery. There was no tendon involvement and no functional loss noted. Tr. at 278. A Mercy Hospital Emergency Services Job Related Illness And Injury Report states that on September 1, 1994, Plaintiff sprained

his left middle finger in a work related injury. Tr. at 277.

Plaintiff underwent a cholecystectomy on June 19, 1995 at Mercy Hospital in Council Bluffs, Iowa. The surgical report noted that Plaintiff had previously undergone upper abdominal surgery. Upon opening Plaintiff's abdomen, the doctor reported seeing multiple adhesions as well as several large gall stones. Tr. at 263.

On September 25, 1995, Plaintiff underwent arthroscopy and partial lateral meniscus resection on his left knee. Tr. at 257.

ALAN R. FISHER, M.D.

On June 27, 1995, when Plaintiff was seen following his cholecystectomy, it was noted that Plaintiff was taking Ativan for anxiety due to "some problems with work and in his home life." Tr. at 313. Medication for anxiety was continued on July 5, 1995, but Plaintiff reported that he had stopped taking his pain medication. Tr. at 311. On July 18, 1995, Plaintiff complained of pain at the site of his incision. A CT scan ruled out intrahepatic abscess. Plaintiff was given a prescription of medication for pain and told to remain off work until released by the doctor. On August 2, 1995, Plaintiff complained of hearing loss, low back pain, and pain at the site of his incision. Plaintiff was given a prescription of Xanax, as well as Ultram and Flexeril for pain. Tr. at 309-10.

Plaintiff was seen on September 2, 1995, because of chronic back pain and because of popping in his left knee. Tr. at 309. Plaintiff returned to the doctor on September 5, 1995. Plaintiff's left knee was swollen. Plaintiff told the doctor that in the past, a refrigerator had fallen against his knee, and on another occasion a freezer he was moving fell against the knee. After an examination that included an x-ray, the diagnosis was internal derangement left knee,

probably cartilaginous. Plaintiff was referred to an orthopedic surgeon. Tr. at 308. On October 12, 1995, about a month after his arthroscopic surgery, Plaintiff reported that he developed burning pain after he knelt down. Since then, his knee was giving way, and it hurt him to go up or down stairs. Tr. at 306. The doctor diagnosed a patellar femoral syndrome. Plaintiff returned on November 14, 1995, to request a referral for physical therapy on instruction from the surgeon. Plaintiff was working as a stocker doing "quite a bit of squatting, kneeling, etc. to stock shelves." Tr. at 305.

On December14, 1995, Plaintiff went to see the doctor because he was having a reaction to medication he had been given for respiratory symptoms. The doctor recommended injections of Epinephrine and Depo Medrol, but Plaintiff refused them because he was afraid that he would "pass out because of a mitral valve prolapse." The doctor, therefore, recommended an over-the-counter medication that Plaintiff could take. Tr. at 304.

When Plaintiff saw Dr. Fisher on January 8, 1996, he continued to work stocking the freezer shelves. The back pain was worse when he had heavy pallets to move around. Dr. Fisher's diagnoses were: Left knee torn lateral meniscus post op. arthroscopic surgery; chronic lumbar syndrome; hearing loss; and, rhinitis. Tr. at 302.

Plaintiff underwent a treadmill exercise test for ischemic heart disease because of a strong family history of coronary artery disease on January 15, 1996. Although the test was negative for heart disease, Plaintiff demonstrated poor aerobic capacity with functional aerobic impairment of 25 %. On January 31, 1996, Plaintiff was seen for a follow up of dizzy spells after he was seen at the emergency room with a diagnosis of labyrinthitis. Tr. at 301. When Plaintiff was seen again on February 5, 1996, for his dizzy spells, Dr. Fisher noted that Plaintiff was under

a lot of stress and that a paternity suit had been filed against him by an 18 year old boy whose mother named Plaintiff as the father. Dr. Fisher prescribed Tranxene along with Dyazide, Darvocet, and Flexeril. Tr. at 300. On March 8, 1996, Plaintiff's dizziness was not as severe as before, but he was having some right lower quadrant pain that was worse after having eaten some tamales the previous night. The doctor's diagnoses were abdominal pain – irritable bowel syndrome and bilateral knee pain – chondromalacia patella. On April 1, 1996, Plaintiff, after having been seen in the emergency room the previous night, was seen for complaints of swelling in the throat in the larynx area. Plaintiff reported quite a bit of pain and discomfort. Tr. at 299. Plaintiff's throat was "much better" when he was seen on April 5, 1996. Plaintiff went to the doctor on May 18, 1996, after he smashed his finger in a truck lid. Tr. at 298. On May 30, 1996, Plaintiff complained of bilateral knee pain particularly with walking. Plaintiff said he noticed a lot of grinding and grading with occasional pain. Tr. at 297

On June 12, 1996, Plaintiff reported a three day history of severe low back pain. There was no radiating pain, but when he would try to straighten up, he would get a catch in his back with excruciating low back pain. Dr. Fisher's diagnosis was Chronic lumbar syndrome. Dr. Fisher recommended that Plaintiff strongly consider pain management through an epidural block. Plaintiff was seen at the doctor's office on June 24, 1996, for a recheck of his sinuses. Tr. at 296. After Plaintiff was seen on July 5, 1996, Dr. Fisher diagnosed allergic rhinitis, chronic lumbar syndrome, and panic attacks. Tr. at 295. When Plaintiff was seen on August 26 for allergic rhinitis, doctor Fisher noted that Plaintiff had seen Dr. Taylon for his back. Dr. Taylon did not recommend surgery because of the low chance of successful outcome. Tr. at 294. Plaintiff was seen on September 11, 1996, with complaints of left knee pain since his February surgery. Plain-

tiff said that he could feel a lump and a sore area. On exam the doctor noticed "prominence of the tibial plateau with tenderness." An x-ray, however, did not show any acute bony abnormality. Tr. at 293. On September 16, 1996, Plaintiff went to his doctor's office where it was noted that the previous evening he had gone to the emergency room for flank pain and some abdominal pain. On examination, Plaintiff was tender over the flank, and a little tender in the right lower quadrant with no rebound and no real guarding. The diagnosis was "Musculoskeletal pain." Tr. at 292.

When Plaintiff saw Dr. Fisher on November 11, 1996, he had quit work due to severe low back pain which was radiating into both legs. The left knee pain was worse with extension and flexion. On examination, there was bilateral paralumbar spasm and tenderness, range of motion was diminished, and straight leg raising was positive for back pain at 30 degrees but negative for radicular pain. The left knee had crepitus on flexion/extension, which was limited because of pain but there was no effusion, erythema or edema. A patella crutching test was positive. The doctor's diagnoses were chondromalacia, left patella, and chronic lumbar syndrome with extruded disc L3, L4. Dr. Fisher wrote that Dr. Talon had recommended surgery but that Plaintiff was hesitant to do so. Dr. Fisher talked to Plaintiff about epidural or steroid injections but Plaintiff was hesitant to follow-up on any of these ideas. Dr. Fisher, therefore, recommended physical therapy three times a week for the next two weeks. Tr. at 290.

On February 22, 1997, Plaintiff saw Dr. Fisher for sore throat, nasal stuffiness, headache, and congestion, as well as continued problems with the left knee. Dr. Fisher noted that Plaintiff has been seeing Dr. Trinh for his knee. Tr. at 289. On April 2, 1997, Plaintiff presented with increasing low back pain, particularly on the right side. Plaintiff was using seven Darvocet and

seven Flexeril a day to try to control his pain. Tr. at 414. On examination, there was right paralumbar spasm and tenderness. Plaintiff was unable to do anteflexion or lateral flexion. Straight leg raising was positive at 10 degrees. There was no knee or ankle jerk on the right, and sensation to light touch was reduced on the right. On April 11, 1997, examination of Plaintiff's back showed marked paralumbar spasm and tenderness. Plaintiff was referred to Dr. Taylon, a neurosurgeon at St. Joseph hospital in Omaha. Tr. at 288. Plaintiff saw Dr. Fisher on May 1, 1997 with a three day history of intermittent numbness along the back of his right leg and some mild low back pain. On examination there was mild tenderness over the paraspinal muscles of the lumbosacral area. There was some pain over the sciatic nerve on the right. There was no obvious deformity, erythema, or edema about the right leg. Dr. Fisher's diagnosis was probable lumbosacral strain with radiculopathy. Tr. at 413. An office note dated June 4, 1997, states that a 24 hour Holter monitor was negative for heart disease. On June 14, 1997, Plaintiff was given Darvocet for back pain. On July 1, 1997, Plaintiff was given an injection of Depo Medrol. Tr. at 412.

Plaintiff saw Dr. Fisher on September 10 and 16, 1997 for an upper respiratory infection, and allergy problems. Tr. at 411.

On November 11, 1997, Plaintiff saw Dr. Fisher "still having a lot of problem with his back." Plaintiff had not returned to work because even when he did light chores around his house, he would get a sudden sharp pain in his low back that caused his back to give out and he would have to sit down or fall to the floor. Plaintiff was status post diskectomy and laminectomy the previous summer by Dr. Taylon. Tr. at 410.

OTHER MEDICAL RECORDS AND REPORTS

Plaintiff saw David Keller, M.D. on August 23, 1995 at the request of Disability Determination services. Before proceeding with a report of his examination, Dr. Keller wrote that he had reviewed some old records from Dr. Talon and suggested that Dr. Talon would provide the best assessment of Plaintiff's disability. Tr. at 330. After his examination, Dr. Keller wrote:

> Lifting and carrying – I suspect he will need to have reduced lifting and carrying responsibilities. I would think lifting would be something you would not want to do with this gentleman. Standing, moving about, walking, and sitting for an 8 hour workday would be okay if he had frequent breaks and had frequent changes of position. Any prolonged one activity, I suspect would cause problems. Stooping, climbing, kneeling, and crawling, because those involve lifting, I would think should be avoided. Handling objects, seeing, hearing speaking, and traveling – I don't think he would have any trouble if there was no excessive weight involved. Long periods of sitting in a car I think would be detrimental to his back. Dust, fumes, temperature, and hazards – I don't think he would have any trouble.

Tr. at 331.

Plaintiff saw Huy D. Trinh, M.D. on September 7, 1995, on referral from Dr. Fisher for his left knee. Dr. Trinh's impression was that Plaintiff had a torn lateral meniscus in the left knee. Plaintiff was scheduled for arthroscopy with lateral menisectomy or meniscal repair depending on the finding. Tr. at 336. The surgery was done on September 25, 1995. Tr. at 257. Plaintiff saw Dr. Trinh on October 2, 1995. Plaintiff said that the knee pain had disappeared, but he was complaining of pain in the anterior thigh since the surgery. Dr. Trinh opined that the pain could have been caused by the application of the tourniquet during the surgery. He advised Plaintiff to start doing isometric quadriceps contraction. He also told Plaintiff about using ice, and knee immobilization. Tr. at 335. On October 19, 1995, Plaintiff told Dr. Trinh that his left

knee gave way some times and that he had pain under the kneecap with walking or going up and down stairs. Dr. Trinh recommended Naprosyn 375 with extra strength tylenol and physical therapy to start a program on quadriceps isometric exercise and hamstring stretching. Tr. at 334.

On July 10, 1996, Plaintiff saw N.B. Reddy, M.D. for a psychiatric evaluation at the request of his attorney. Tr. at 366-69. Plaintiff was described as "a 38-year-old divorced Caucasian male, father of four children. Patient is employed part-time and currently lives with his girlfriend and their three children. Patient has a history of psychiatric contact as an outpatient." Plaintiff told Dr. Reddy that he felt down and depressed as well as not being able to control himself and that he becomes tearful at the drop of a hat. Plaintiff denied thoughts of hurting himself or others. Plaintiff said that he had not been able to tolerate antidepressants prescribed by Dr. Fisher. Tr. at 366. Dr. Reddy wrote:

> Patient states that his mother was married three times and has nine children. He is eighth of the siblings strip of nine. Patient states he was raised mostly by his mother since his father was usually out on job assignments. He also states that when he was seven years old, his mother was paralyzed in a car accident and he started to cut classes to take care of his mother. He states because of that frequent nonattendance, he was put in a juvenile house from age 11 to 18. Patient states that he has been on his own since then. Patient stated he got hurt on the job about 20 years ago and since then, has been [seen] by several physicians. He states, however, he has been passed along with nothing being done anytime. Patient states that despite the severe pain, he was able to work to the best of his ability up until recently to the point where he can work only a few hours a week since November 1995. Patient admits of using drugs but has been sober for many years. Patient denied any other legal problems.

After a mental status examination, Dr. Reedy diagnosed a depressive disorder not otherwise specified. Dr. Reedy assessed Plaintiff's global assessment of functioning at 70 to 80 in spite of severe psychosocial stressors. Tr. at 367. Plaintiff was reluctant to accept medication,

but did agree to see a therapist. Tr. at 368.

Plaintiff was seen by Charles Taylon, M.D. on July 12, 1996. Plaintiff complained of back pain but no leg pain. A straight leg raising test was negative, and pain behavior was noted. Tr. at 383. On August 5, 1996, Plaintiff complained of left lower extremity pain so Dr. Taylon ordered x-rays. Tr. at 381. The x-rays of Plaintiff's back showed mild degenerative changes at L4-5 and L5-S1. Tr. at 382. Plaintiff was reevaluated on August 8, 1996, at which time an MRI was ordered. Tr. at 378. The MRI showed a moderate sized central extrusion of the L3-4 disc with effacement of the thecal sac, a moderate deep broad bulge of the L4-5 disc, and degenerative changes of the L4-5 and L5-S1 disc spaces. Tr. at 379. Dr. Taylon discussed surgery with Plaintiff, which Plaintiff declined. Tr. at 376. Dr. Taylon wrote that Plaintiff was able to return to work with restrictions of 35 pound lifting and no repetitive bending or twisting. Tr. at 377.

Plaintiff returned to Dr. Taylon on April 24, 1997, complaining of increased problems after lifting a couch. Tr. at 375. Examination showed no motor or reflex abnormalities but straight leg raising was significantly limited on the left side. Pinprick was decreased in both legs. An MRI was ordered. Tr. at 374. The MRI report is dated April 28, 1997. This study showed: 1) Moderate sized central extrusion at L3-4, unchanged since the study of August 6, 1997; 2) Mild increase in size of central and right sided disc extrusion at L4-5. Associated mild bilateral L4-5 foraminal narrowing; and 3) Mild right foraminal narrowing and moderate left foraminal narrowing at L5-S1 in association with circumferential disc bulge and small central protursion. Tr. at 373. Dr. Taylon wrote that the MRI study indicated the need for surgery, but Plaintiff decided not to proceed with surgery. Tr. at 370.

In a letter dated December 22, 1997, addressed to Plaintiff's attorney, Dr. Taylon wrote:

"His restrictions are 20 pounds of lifting with no bending or twisting." Tr. at 428.